

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Case No. 2:17-CV-06196 (VEB)

ROLANDO ORNELAS,

Plaintiff,

vs.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

DECISION AND ORDER

I. INTRODUCTION

In August of 2013, Plaintiff Rolando Ornelas applied for Disability Insurance Benefits under the Social Security Act. The Commissioner of Social Security denied the application. Plaintiff, represented by James P. Shea, Esq., commenced this action seeking judicial review of the Commissioner's denial of benefits pursuant to 42 U.S.C. §§ 405 (g) and 1383 (c)(3).

1 The parties consented to the jurisdiction of a United States Magistrate Judge.
2 (Docket No. 11, 12). On April 25, 2018, this case was referred to the undersigned
3 pursuant to General Order 05-07. (Docket No. 18).

4 5 **II. BACKGROUND**

6 Plaintiff applied for benefits on August 8, 2013, alleging disability beginning
7 September 29, 2010. (T at 160).¹ The application was denied initially and on
8 reconsideration. Plaintiff requested a hearing before an Administrative Law Judge
9 (“ALJ”). On April 26, 2016, a hearing was held before ALJ Mary L. Everstine. (T
10 at 57). Plaintiff appeared with his attorney and testified. (T at 60-71). The ALJ also
11 received testimony from Kelly Bartlett, a vocational expert (T at 71-75).

12 On May 25, 2016, the ALJ issued a written decision denying the application
13 for benefits. (T at 18-36). The ALJ’s decision became the Commissioner’s final
14 decision on July 3, 2017, when the Appeals Council denied Plaintiff’s request for
15 review. (T at 1-7).

16 On August 21, 2017, Plaintiff, acting by and through his counsel, filed this
17 action seeking judicial review of the Commissioner’s decision. (Docket No. 1). The
18

19 ¹ Citations to (“T”) refer to the transcript of the administrative record at Docket No. 16.

1 Commissioner interposed an Answer on January 24, 2018. (Docket No. 15). The
2 parties filed a Joint Stipulation on April 19, 2018. (Docket No. 17).

3 After reviewing the pleadings, Joint Stipulation, and administrative record,
4 this Court finds that the Commissioner’s decision should be affirmed and this case
5 must be dismissed.

7 **III. DISCUSSION**

8 **A. Sequential Evaluation Process**

9 The Social Security Act (“the Act”) defines disability as the “inability to
10 engage in any substantial gainful activity by reason of any medically determinable
11 physical or mental impairment which can be expected to result in death or which has
12 lasted or can be expected to last for a continuous period of not less than twelve
13 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a
14 claimant shall be determined to be under a disability only if any impairments are of
15 such severity that he or she is not only unable to do previous work but cannot,
16 considering his or her age, education and work experiences, engage in any other
17 substantial work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A),
18 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and
19 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

1 The Commissioner has established a five-step sequential evaluation process
2 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step
3 one determines if the person is engaged in substantial gainful activities. If so,
4 benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If not, the
5 decision maker proceeds to step two, which determines whether the claimant has a
6 medically severe impairment or combination of impairments. 20 C.F.R. §§
7 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

8 If the claimant does not have a severe impairment or combination of
9 impairments, the disability claim is denied. If the impairment is severe, the
10 evaluation proceeds to the third step, which compares the claimant's impairment(s)
11 with a number of listed impairments acknowledged by the Commissioner to be so
12 severe as to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii),
13 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or
14 equals one of the listed impairments, the claimant is conclusively presumed to be
15 disabled. If the impairment is not one conclusively presumed to be disabling, the
16 evaluation proceeds to the fourth step, which determines whether the impairment
17 prevents the claimant from performing work which was performed in the past. If the
18 claimant is able to perform previous work, he or she is deemed not disabled. 20
19 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, the claimant's residual
20

functional capacity (RFC) is considered. If the claimant cannot perform past relevant work, the fifth and final step in the process determines whether he or she is able to perform other work in the national economy in view of his or her residual functional capacity, age, education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

The initial burden of proof rests upon the claimant to establish a *prima facie* case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden is met once the claimant establishes that a mental or physical impairment prevents the performance of previous work. The burden then shifts, at step five, to the Commissioner to show that (1) plaintiff can perform other substantial gainful activity and (2) a “significant number of jobs exist in the national economy” that the claimant can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

B. Standard of Review

Congress has provided a limited scope of judicial review of a Commissioner’s decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner’s decision, made through an ALJ, when the determination is not based on legal error and is supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).

“The [Commissioner’s] determination that a plaintiff is not disabled will be upheld if the findings of fact are supported by substantial evidence.” *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial evidence is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n 10 (9th Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d 599, 601-02 (9th Cir. 1989). Substantial evidence “means such evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971)(citations omitted). “[S]uch inferences and conclusions as the [Commissioner] may reasonably draw from the evidence” will also be upheld. *Mark v. Celebreeze*, 348 F.2d 289, 293 (9th Cir. 1965). On review, the Court considers the record as a whole, not just the evidence supporting the decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989)(quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

It is the role of the Commissioner, not this Court, to resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational interpretation, the Court may not substitute its judgment for that of the Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be set aside if the proper legal standards were not applied in weighing the evidence and

1 making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d
2 432, 433 (9th Cir. 1987). Thus, if there is substantial evidence to support the
3 administrative findings, or if there is conflicting evidence that will support a finding
4 of either disability or non-disability, the finding of the Commissioner is conclusive.
5 *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987).

6 **C. Commissioner's Decision**

7 The ALJ determined that Plaintiff met the insured status requirements of the
8 Social Security Act through December 31, 2013 (the “date last insured”). (T at 23).
9 The ALJ found that Plaintiff had not engaged in substantial gainful activity between
10 the alleged onset date (September 29, 2010) and the date last insured. (T at 23). The
11 ALJ concluded that Plaintiff’s multi-level disc bulges and stenosis (greatest at L3-4),
12 status post L3-L5 laminectomy and decompression; residual progressive right foot
13 drop; and obesity were “severe” impairments under the Act. (Tr. 23).

14 However, the ALJ found that Plaintiff did not have an impairment or
15 combination of impairments that met or medically equaled one of the impairments
16 set forth in the Listings. (T at 24).

17 The ALJ determined that Plaintiff retained the residual functional capacity
18 (“RFC”) to perform sedentary work as defined in 20 CFR § 416.967 (a), except that
19 he would need a cane when walking; could not work at unprotected heights, climb

1 ladders, or operate hazardous moving machinery; and could occasionally climb
2 stairs, balance, stoop, kneel, crouch, and crawl. (T at 24-25).

3 The ALJ found that, as of the date last insured, Plaintiff could not perform his
4 past relevant work as a delivery driver or appliance assembler. (T at 30). However,
5 considering Plaintiff's age (46 on the date last insured), education (at least high
6 school), work experience, and residual functional capacity, the ALJ determined that
7 there were jobs that exist in significant numbers in the national economy that
8 Plaintiff can perform. (T at 30).

9 As such, the ALJ found that Plaintiff was not entitled to benefits under the
10 Social Security Act from September 29, 2010 (the alleged onset date) through
11 December 31, 2013 (the date last insured). (T at 31). As noted above, the ALJ's
12 decision became the Commissioner's final decision when the Appeals Council
13 denied Plaintiff's request for review. (T at 1-7).

14 **D. Disputed Issues**

15 As set forth in the parties' Joint Stipulation (Docket No. 17), Plaintiff offers
16 three (3) arguments in support of his claim that the Commissioner's decision should
17 be reversed. First, he contends that new and material evidence warrants a remand.
18 Second, Plaintiff argues that the ALJ's Listings analysis was flawed. Third, Plaintiff
19

1 challenges the ALJ's credibility determination. This Court will address each
2 argument in turn.

3 IV. ANALYSIS

4 A. New Evidence

5 The Appeals Council is required to consider "new and material" evidence if it
6 "relates to the period on or before the date of the [ALJ's] hearing decision." 20
7 C.F.R. § 404.970(b); see also § 416.1470(b). The Appeals Council "will then
8 review the case if it finds that the [ALJ]'s action, findings, or conclusion is contrary
9 to the weight of the evidence currently of record." 20 C.F.R. § 404.970(b); see §
10 416.1470(b)."

11 In the Ninth Circuit, when the Appeals Council considers new evidence in the
12 context of denying the claimant's request for review, the reviewing federal court
13 must "consider the rulings of both the ALJ and the Appeals Council," and the record
14 before the court includes the ALJ's decision and the new evidence. *Ramirez v.*
15 *Shalala*, 8 F.3d 1449, 1452 (9th Cir. 1993); *Gomez v. Chater*, 74 F.3d 967, 971 (9th
16 Cir. 1996).

17 Because the Appeals Council's decision to deny the claimant's request for
18 review is not a "final decision" by the Commissioner, the federal courts have no
19 jurisdiction to review it. Rather, the question presented in such cases is whether "the

1 ALJ's decision is supported by substantial evidence after taking into account the
2 new evidence." *Acheson v. Astrue*, No. CV-09-304, 2011 U.S. Dist. LEXIS 25898,
3 at *11 (E.D. Wash. Mar. 11, 2011); *see also Taylor v. Comm'r of Soc. Sec. Admin.*,
4 659 F.3d 1228, 1233 (9th Cir. 2011).

5 If the new evidence creates a reasonable possibility that it would change the
6 outcome of the ALJ's decision, then remand is appropriate to allow the ALJ to
7 consider the evidence. *Mayes v. Massanari*, 276 F.3d 453, 462 (9th Cir. 2001).

8 In the present case, Plaintiff provided the Appeals Council with a report from
9 Dr. William Dillin, who performed an orthopedic consultation on December 2, 2013.
10 (T at 263, Docket No. 17-1). The Appeals Council found that Dr. Dillin's report did
11 not create a reasonably probability that it would change the outcome of the ALJ's
12 decision. (T at 2).

13 This Court finds that the ALJ's decision is supported by substantial evidence
14 after taking into account Dr. Dillin's report. Dr. Dillin did not assess any functional
15 limitations or opine as to Plaintiff's disability status. Plaintiff contends that Dr.
16 Dillin's examination findings support his argument that his impairments meet or
17 medically equal §1.04 of the Listings. However, Dr. Dillin's findings were
18 generally consistent with the evidence of record, which was thoroughly considered
19 and discussed by the ALJ. For example, Dr. Dillin noted reduced muscle strength in

1 the right foot. (Docket No. 17-1, at p. 14). This finding is also contained in the
2 record evidence reviewed by the ALJ. (T at 337, 358, 566, 665). While Dr. Dillin
3 noted decreased sensation “at the L5 dermatome,” (Docket No. 17-1, at p. 12), the
4 record evidence considered by the ALJ also contained this finding (T at 860, 877,
5 884), along with other reports of normal sensation. (T at 337, 358, 366).

6 Moreover, as the one-time examination of a consulting physician, Dr. Dillin’s
7 report would need to be considered in the context of the overall medical record,
8 which the ALJ carefully reviewed and thoroughly discussed. As such, even if there
9 were aspects of the new report that were arguably different than the findings in the
10 record evidence, that would not *ipso facto* undermine the ALJ’s decision, which
11 could otherwise be supported by substantial evidence already in the record.

12 As discussed further below, the ALJ’s Listings analysis was supported by
13 substantial evidence. There is no reasonable possibility that the ALJ would have
14 reached a different conclusion if she had considered Dr. Dillin’s report.

15 **B. Listings Analysis**

16 At step three of the sequential evaluation, the ALJ must determine whether the
17 claimant has an impairment or combination of impairments that meets or equals an
18 impairment listed in Appendix 1 of the Regulations (the “Listings”). *See* 20 C.F.R.
19 §§ 404.1520(d), 416.920(d). If a claimant meets or equals a listed impairment, he or

1 she is “conclusively presumed to be disabled and entitled to benefits.” *Bowen v. City*
2 *of New York*, 476 U.S. 467, 471, 106 S. Ct. 2022, 90 L. Ed. 2d 462 (1986); *see also*
3 *Ramirez v. Shalala*, 8 F.3d 1449, 1452 (9th Cir. 1993); *see also* 20 C.F.R. §§
4 404.1525(a); 416.925(a).

5 An impairment meets a Listing if the impairment matches all of the medical
6 criteria specified in the Listing. *Sullivan v. Zebley*, 493 U.S. 521, 530, 110 S. Ct.
7 885, 107 L. Ed. 2d 967 (1990); *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir.
8 1999). An impairment or combination of impairments that satisfies some, but not all
9 of the criteria, does not qualify. *Sullivan*, 493 U.S. at 530; *Tackett*, 180 F.3d at 1099.

10 The claimant bears the burden of proving that she has an impairment or
11 combination of impairments that meets or equals the criteria of a listed impairment.
12 To satisfy this burden, the claimant must offer medical findings equal in severity to
13 all requirements, which findings must be supported by medically acceptable clinical
14 and laboratory diagnostic techniques. 20 C.F.R. § 416.926(b).

15 If a claimant’s impairment does not satisfy the Listings criteria, he or she may
16 still be disabled if the impairment “equals” a listed impairment. 20 C.F.R. §
17 404.1520(d). Equivalence will be found if the medical findings are (at a minimum)
18 equal in severity and duration to the Listed impairment. *Marcia v. Sullivan*, 900 F.2d
19 172, 175 (9th Cir. 1990). To determine medical equivalence, the Commissioner

1 compares the findings concerning the alleged impairment with the medical criteria of
2 the listed impairment. 20 C.F.R. §§ 416.924(e), 416.926.

3 If a claimant has multiple impairments, the ALJ must determine “whether the
4 combination of [the] impairments is medically equal to any listed impairment.” 20
5 C.F.R. § 404.1526(a). The claimant’s symptoms “must be considered in combination
6 and must not be fragmentized in evaluating their effects.” *Lester v. Chater*, 81 F.3d
7 821, 829 (9th Cir. 1996). “A finding of equivalence must be based on medical
8 evidence only.” *See Lewis v. Apfel*, 236 F.3d 503, 514 (9th Cir. 2001)(citing 20
9 C.F.R. § 1529(d)(3)).

10 “[I]n determining whether a claimant equals a listing under step three . . . the
11 ALJ must explain adequately his evaluation of alternative tests and the combined
12 effects of the impairments.” *Marcia*, 900 F.2d at 176 (9th Cir. 1990). A remand may
13 be required if ALJ fails adequately to consider a Listing that plausibly applies to the
14 claimant’s case. *See Lewis*, 236 F.3d at 514.

15 In the present case, the ALJ found that Plaintiff did not have an impairment or
16 combination of impairments that met or medically equaled one of the impairments
17 set forth in the Listings. (T at 24). The ALJ gave specific consideration to Listing
18 §1.04 (spine disorders). (T at 24).

1 Plaintiff argues that his right foot drop and need for a cane make him unable
2 to ambulate over rough or uneven surfaces at a reasonable pace and, thus, Listing
3 §1.04A should be deemed to be met or medically equaled.

4 To satisfy Listing §1.04, Plaintiff must establish (1) nerve root compression
5 with nerve-related pain, (2) limited range of motion of the spine, (3) motor loss
6 demonstrated by atrophy and weakness, (4) sensory and reflex loss accompanying
7 the motor loss, and (5) positive straight leg raising tests seated and supine. 20 CFR
8 Part 404, Subpart P. App. 1, at §1.04.

9 Here, the ALJ's conclusion that Plaintiff did not meet or medically equal
10 Listing § 1.04 is supported by the record evidence, including the assessment of Dr.
11 A. Nasrabadi, a State Agency review physician, who opined that Plaintiff did not
12 meet or medically equal Listing §1.04. (T at 96-99). State Agency review physicians
13 are highly qualified experts and their opinions, if supported by other record
14 evidence, may constitute substantial evidence sufficient to support a decision to deny
15 benefits. *See Saelee v. Chater*, 94 F.3d 520, 522 (9th Cir. 1996); *see also* 20 CFR §
16 404.1527 (f)(2)(i) ("State agency medical and psychological consultants and other
17 program physicians, psychologists, and other medical specialists are highly qualified
18 physicians, psychologists, and other medical specialists who are also experts in
19 Social Security disability evaluation.").

1 Dr. David Hoenig, a consulting physician, performed a comprehensive
2 neurologic evaluation in February of 2014. Straight leg testing was negative in the
3 seated and supine position. (T at 781). Dr. Hoenig opined that Plaintiff could
4 perform work-related duties consistent with light work. (T at 782). Dr. Lokesh
5 Tantuwaya performed a neurosurgical evaluation in March of 2015 and concluded
6 that Plaintiff could perform sedentary work, with no lifting over 30 pounds and no
7 prolonged standing. (T at 1038).

8 Plaintiff's primary argument is that he meets or equals Listing §1.04 because
9 he cannot ambulate effectively. The ALJ did conclude that Plaintiff's ability to
10 ambulate was limited by his need for a cane. (T at 24-25). However, Plaintiff's need
11 for a cane does not constitute an inability to "ambulate effectively," as required to
12 meet or medically equal the Listing. Indeed, the inability to walk without the use of
13 "two canes" is provided as an example of inability to ambulate effectively. *See*
14 Listing §1.00 (B)(2)(b)(2)(emphasis added).

15 The courts have consistently concluded that the inability to walk on uneven
16 terrain and the need for a single-point cane does not establish ineffective ambulation.
17 *See Ross v. Colvin*, No. CV 15-01203, 2016 U.S. Dist. LEXIS 24100, at *17-22
18 (C.D. Cal. Feb. 26, 2016); *Van Gilder v. Colvin*, No. CV 14-5909, 2016 U.S. Dist.
19 LEXIS 1865, at *16-18 (C.D. Cal. Jan. 7, 2016). Thus, to satisfy the requirements of

1 the Listing, the claimant must show something more than the inability to ambulate
2 perfectly, or the inability to ambulate without assistance. Rather, it requires an
3 “extreme limitation of the ability to walk.” Listing 1.00 (2)(b)(1). This Court finds
4 no reversible error in the ALJ’s Listings analysis, including with respect to
5 Plaintiff’s ability to ambulate effectively.

6 **C. Credibility**

7 A claimant’s subjective complaints concerning his or her limitations are an
8 important part of a disability claim. *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d
9 1190, 1195 (9th Cir. 2004)(citation omitted). The ALJ’s findings with regard to the
10 claimant’s credibility must be supported by specific cogent reasons. *Rashad v.*
11 *Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent affirmative evidence of
12 malingering, the ALJ’s reasons for rejecting the claimant’s testimony must be “clear
13 and convincing.” *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995). “General
14 findings are insufficient: rather the ALJ must identify what testimony is not credible
15 and what evidence undermines the claimant’s complaints.” *Lester*, 81 F.3d at 834;
16 *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

17 However, subjective symptomatology by itself cannot be the basis for a
18 finding of disability. A claimant must present medical evidence or findings that the
19 existence of an underlying condition could reasonably be expected to produce the

1 symptomatology alleged. See 42 U.S.C. §§423(d)(5)(A), 1382c (a)(3)(A); 20 C.F.R.
2 § 404.1529(b), 416.929; SSR 96-7p.

3 In this case, Plaintiff testified as follows: He spends most of his time at home
4 resting and lying down. (T at 65). His wife does most of the chores. (T at 65, 69).
5 Pain medications cause drowsiness. (T at 62). He can attend to personal care
6 activities, but needs to lie down 6-7 times a day for 30-45 minutes due to pain. (T at
7 69-70). He can sit for about 90 minutes at a time, but that varies due to pain. (T at
8 62-63). He can stand for 15-20 minutes and can lift 20 pounds. (T at 63).

9 The ALJ concluded that Plaintiff's medically determinable impairments could
10 reasonably be expected to cause the alleged symptoms, but that his statements
11 concerning the intensity, persistence, and limiting effects of the symptoms were not
12 fully credible. (T at 25).

13 This Court finds that the ALJ's credibility determination was supported by
14 substantial evidence and consistent with applicable law. First, the ALJ noted that
15 Plaintiff's subjective claims of disabling limitations were contradicted by the
16 objective medical evidence. Dr. Hoenig opined that Plaintiff could perform work-
17 related duties consistent with light work. (T at 782). Dr. Tantuwaya concluded that
18 Plaintiff could perform sedentary work, with no lifting over 30 pounds and no
19 prolonged standing. (T at 1038). Dr. Jon Greenfield, a consulting physician,

1 performed a workers' compensation examination, and opined that Plaintiff could
2 perform light work. (T at 947)

3 Although lack of supporting medical evidence cannot form the sole basis for
4 discounting pain testimony, it is a factor the ALJ may consider when analyzing
5 credibility. *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005). In other words, an
6 ALJ may properly discount subjective complaints where, as here, they are
7 contradicted by medical records. *Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d
8 1155, 1161 (9th Cir. 2008); *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir.
9 2002).

10 In addition, the ALJ noted Plaintiff's activities of daily living and found them
11 inconsistent with the level of limitation alleged. For example, Dr. Tantuwaya
12 reported that Plaintiff could attend to self-care, drive, perform light housework, and
13 tolerate his pain without narcotic medication. (T at 1038). He used public
14 transportation to travel to medical appointments that were up to 90 minutes away. (T
15 at 1038).

16 When assessing a claimant's credibility, the ALJ may employ "ordinary
17 techniques of credibility evaluation." *Turner v. Comm'r of Soc. Sec.*, 613 F.3d 1217,
18 1224 n.3 (9th Cir. 2010)(quoting *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir.
19 1996)). Activities of daily living are a relevant consideration in assessing a

1 claimant's credibility. *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).
2 Although the claimant does not need to "vegetate in a dark room" to be considered
3 disabled, *Cooper v. Brown*, 815 F.2d 557, 561 (9th Cir. 1987), the ALJ may discount
4 a claimant's testimony to the extent his or her activities of daily living "contradict
5 claims of a totally debilitating impairment." *Molina v. Astrue*, 674 F.3d 1104, 1112-
6 13 (9th Cir. 2011).

7 There is no question that Plaintiff has significant medical conditions and lives
8 with pain and limitation. However, the fact that a claimant suffers from pain, even
9 significant pain, is not sufficient, without more, to justify an award of benefits.
10 Rather, the pain must be so severe as to preclude gainful employment. *See Fair v.*
11 *Bowen*, 885 F.2d 597, 603 (9th Cir. 1989)("[M]any medical conditions produce pain
12 not severe enough to preclude gainful employment. The Disability Insurance and
13 Supplemental Security Income programs are intended to provide benefits to people
14 who are unable to work; awarding benefits in cases of nondisabling pain would
15 expand the class of recipients far beyond that contemplated by the statute.");
16 *Curbow v. Colvin*, No. CV-14-8222, 2016 U.S. Dist. LEXIS 12147, *16 (D. Ariz.
17 Feb. 1, 2016)("[D]isability requires more than mere inability to work without
18 pain.").

1 For the reasons stated above, this Court finds that the ALJ's credibility
2 determination is supported by substantial evidence and must be sustained. *See*
3 *Morgan v. Commissioner*, 169 F.3d 595, 599 (9th Cir. 1999)("[Q]uestions of
4 credibility and resolutions of conflicts in the testimony are functions solely of the
5 [Commissioner].").

6 V. CONCLUSION

7 After carefully reviewing the administrative record, this Court finds
8 substantial evidence supports the Commissioner's decision, including the objective
9 medical evidence and supported medical opinions. It is clear that the ALJ thoroughly
10 examined the record, afforded appropriate weight to the medical evidence, including
11 the assessments of the examining medical providers and the non-examining
12 consultants, and afforded the subjective claims of symptoms and limitations an
13 appropriate weight when rendering a decision that Plaintiff is not disabled. This
14 Court finds no reversible error and substantial evidence supports the
15 Commissioner's decision.

17 VI. ORDERS

18 IT IS THEREFORE ORDERED that:

19 Judgment be entered AFFIRMING the Commissioner's decision; and

1 The Clerk of the Court shall file this Decision and Order, serve copies upon
2 counsel for the parties, and CLOSE this case.

3 DATED this 25th day of September, 2018,

4 /s/Victor E. Bianchini
5 VICTOR E. BIANCHINI
6 UNITED STATES MAGISTRATE JUDGE
7
8
9
10
11
12
13
14
15
16
17
18
19
20